

DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, LOUISVILLE
CORPS OF ENGINEERS
P.O. BOX 59
LOUISVILLE, KENTUCKY 40201-0059

6/1/97

August 20, 1997

Operations Division
Regulatory Branch (South)
ID No. 199501367-rjs

RECEIVED

AUG 25 1997

Mr. Andrew Short
Peabody Coal Co.
Lynville Business Unit
P.O. 7
Lynville, IN 47619

Dear Mr. Short:

This is in regard to your application requesting authorization for construction of a levee, and surface coal mining and reclamation activities in Warrick County, Indiana. The area is adjacent to Pigeon Creek and is also specified as IDNR Permit No. S-00326, and is also known as the Millersberg II North permit. We have reviewed the submitted data to determine whether a Department of the Army (DA) permit will be required under the provisions of Section 404 of the Clean Water Act.

As stated by Peabody Coal Co. (Peabody) the IDNR permit area includes 68 acres of jurisdictional wetlands. Approximately 50 acres of the wetlands would be disturbed. Of the 50 acres, only 4.6 acres would be in the actual surface mining area, and 23.6 acres would be for areas of surface disturbance in the proposed mining operation (silt basins, ditches, runoff from silt basins, levee). An additional 21.8 acres would be in an area of temporary surface disturbance for a heavy equipment crossing. The disturbance for a heavy equipment crossing was approved by letter dated April 3, 1997, from this office as part of a "Temporary road for moving mining machinery" under 33 CFR 323.4 (Discharges not requiring permits).

To minimize the impacts of the proposed coal mining operation, Peabody has redesigned the mining operation to avoid disturbing 190.8 acres of jurisdictional wetland. This would include areas designated as "habitat area" in the National Conservation agreement for the Northern Copperbelly water snake.

As mitigation for this proposal, Peabody proposes both on and off-site mitigation. There would be 25.0 acres in the off-site mitigation area, and 40.1 acres of wetlands in the on-site area within permit No. S-00326. The wetland type would be of a bottomland hardwood wetland (PFO1E).

The information supplied by you was distributed to the coordinating agencies in a Pre-Construction Notification (PCN). The responses received within the coordination period were from the U.S. Fish & Wildlife Service, Bloomington, IN, the U.S. Environmental Protection Agency, Chicago, IL. We have also received a response from the Indiana Department of Natural Resources after the comment period ended. Copies of the agency responses have been provided to you earlier.

The agency responses are essentially in four areas, (1) reduction of further impacts by relocation of the levee, (2) detailed mitigation standards for the on and off-site mitigation areas, (3) impacts to endangered species, and (4) requests that a Corps inspector or an independent consultant be used to oversee all phases of the bottomland forest reclamation.

This office has reviewed the information supplied by Peabody for different mining permits proposed for this area, and we appreciate the efforts taken to minimize the impacts to wetland. We would like to ensure the successful completion of the proposed wetland mitigation. We have also reviewed the supplemental information provided by Peabody in their letters dated August 18, 1997, and August 20, 1997.

Based upon our review of the submitted data, the responses to the PCN and provided this activity is **authorized by the State of Indiana Surface Mining and Reclamation Program under Title V of the Surface Mining and Control and Reclamation Act of 1977**, your proposal would qualify for Nationwide authorization under 33 CFR 330, No. 21 (Surface Coal Mining), as published in the Federal Register, dated December 13, 1996 provided you comply with the enclosed General Conditions and the following Special Conditions:

1. The mitigation plan is part of the reclamation plan approved by the State of Indiana Surface Mining Program for IDNR permit No. S-00326, and any subsequent revisions.

2. Peabody shall construct a minimum of 25 acres of forested bottomland hardwood jurisdictional wetland at the off-site mitigation area, and a minimum of 40 acres of forested bottomland jurisdictional jurisdictional wetland at the on-site area on permit No. S-00326.

3. Peabody shall by January 31, 1998, submit to this office for approval a detailed wetland mitigation plan for both the on-site and off-site mitigation areas. This plan would be in accordance with the "Wetland Compensatory Mitigation and Monitoring Plan Guidelines for Kentucky". Peabody shall make any

changes to the plan requested by this office during the review process.

4. Peabody shall agree to contract an outside independent consultant with expertise in wetland mitigation to prepare detailed plans, and provide monitoring/Inspection services to ensure the success of the forested wetland mitigation areas.

This authorization will be effective as soon as we receive your signed acceptance of the conditions. Please sign and date the duplicate copy of this letter in the space provided and return the signed copy in the enclosed envelope. Note that we also perform periodic inspections to ensure compliance with our permit conditions and applicable Federal laws.

If you have any questions, please contact this office by writing to the above address, ATTN: CEORL-OP-FS or by calling Mr. Ronny J. Sadri at (502) 582-5452. Any correspondence on this matter should refer to our ID No. 199501367-rjs.

Sincerely,

ORIGINAL SIGNED

Daniel L. Evans
Chief, South Section
Regulatory Branch

Enclosure

(I accept the conditions of this authorization)

Peabody Coal Co.

Date

ADDRESSES FOR COORDINATING AGENCIES

Mr. David Schulenberg
Chief, Wetlands Regulatory Section
WQW-16J
U.S. Environmental Protection Agency
Region V
77 West Jackson Boulevard
Chicago, Illinois 60604

Mr. Dave Hudak
Field Supervisor
U.S. Department of the Interior
Fish and Wildlife Service
620 South Walker Street
Bloomington, Indiana 47403-2121

Mr. Steve Jose
Division of Fish and Wildlife
Department of Natural Resources
402 West Washington Street, Room 273
Indianapolis, Indiana 46204

Mr. David Phillips
Division of Reclamation
Indiana Department of Natural Resources
RR # 2, Box 129
Jasonville, IN 47438

Inspection Crew (Sparks)